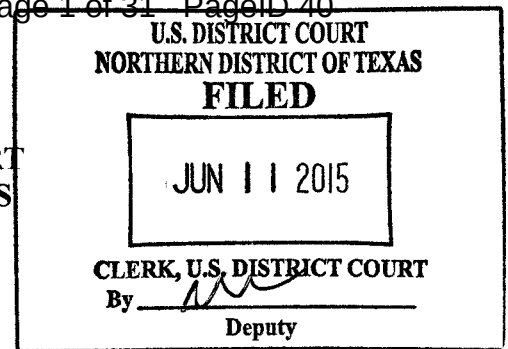


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



ROSA RIVERA

Plaintiff.

v.

MNE SERVICES, INC.

D/B/A AMERILOAN

Defendant.

CIVIL ACTION NO. 4-15-CV-195-A

PLAINTIFF'S MOTION FOR DEFAULT JUDGEMENT

COMES NOW, the Plaintiff Rosa Rivera and asks the Court to render a default judgment against Defendant MNE Services, Inc. d/b/a Ameriloan, as authorized by Federal Rule of Civil Procedure 55(a) and Fed. R. Civ. P. 55(b)(2).

I. INTRODUCTION

1. Plaintiff is Rosa Rivera; Defendant is MNE Services, Inc. d/b/a Ameriloan
2. On March 16, 2015, Plaintiff filed an Original Complaint with the Court. **(See Docket No.1)**
3. On March 20, 2015, Defendant was served with a copy of Summons and Plaintiff's Complaint by Carlos Cascos, Secretary of State of Texas. **(See Docket No. 6)** A copy of the return of service is attached as **(Exhibit A)**.
4. Defendant MNE Services, Inc. d/b/a Ameriloan responsive pleading was due on April 15, 2015. Defendant has not filed a responsive pleading or otherwise defended the suit.

5. On May 27, 2015, the Clerk entered a default against defendant. A copy of the order on entry of default is attached as **(Exhibit B)**.
6. Plaintiff Rosa Rivera now asks the Court to render a default judgment.

II. STATEMENT OF ISSUES BEFORE THIS COURT

The questions presented before this Court is:

1. Should a default judgment be entered against Defendant MNE Services, Inc. d/b/a Ameriloan for failure to file a responsive pleading by April 15, 2015?
2. Does Plaintiff provide sufficient evidence to state a reasonable claim against Defendant?

III. STANDARD OF REVIEW

Securing a default judgment is a three-step procedure involving the defendants' default, entry of default, and a default judgment. See *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996). A "default" occurs when the defendants do not plead or otherwise respond to the complaint, and an entry of default is the notation the clerk makes after the default is established by affidavit. The effect of the entry of default is that it cuts off the defendants' right to appear in the case with respect to liability issues. See *Greyhound Exhibitgroup, Inc. v. E.L.U.L. Rlty, Corp.*, 973 F.2d 155, 160 (2nd Cir. 1992).

After the entry of default by the clerk, a party may seek a default judgment from the court. Fed. R. Civ. P. 55(b)(2). Prior to the entry of any default judgment, the plaintiff must include a sworn statement detailing whether the defendant currently serves in the military. See 50 U.S.C. app. § 521(b)(1). Moreover, a default judgment should not be entered against an infant or

incompetent person unless they are represented in the action by a guardian, or other representative.

IV. ARGUMENTS AND AUTHORITIES

A. Explanation of the TCPA

In general, TCPA prohibits making calls to cellular telephones where the caller, uses an automatic dialing system and/or leaves pre-recorded messages unless the recipient, provided the caller prior express consent. In part, the TCPA, 47 U.S.C. § 227(b)(1)(A) states:

“It shall be unlawful for any person within the United States...to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice...to any telephone number assigned to a ...cellular telephone service...or any service for which the called party is charged for the call.”

The TCPA, 47 U.S.C. § 227(a)(1) defines “Automatic Telephone Dialing System” as:

*“means equipment which has the capacity ---
(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and
(B) to dial such numbers.*

The elements of a TCPA claim under 47 U.S.C. § 227(b)(1)(A) are: (1) the defendant called a cellular telephone number; (2) using an automatic telephone dialing system; (3) without the recipient's prior express consent. See *Satterfield v. Simon & Schuster, Inc.* (9th Cir. 2009).

Plaintiff contends that MNE Services, Inc. d/b/a Ameriloan violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 by calling her cellular phone number — thirty (30) separate times with a type of automatic telephone dialing system (“ATDS”) — for a non-emergency purpose, — without having her prior express consent to do so.

B. Evidence

Plaintiff was the owner of the cellular telephone number (203) 721-2531 at the time the calls in question were placed. Further, Plaintiff is still the current owner of the cellular telephone (203) 721-2531 in question. **(See Exhibit C)**

a. Defendant called Plaintiff's cellular telephone number (203) 721-2531.

Defendant called Plaintiff's cellular telephone number (203) 721-2531 from telephone number (800) 326-5383, (800) 371-9252, and (800) 396-2018. Plaintiff establishes this fact by presenting the Court with true and correct copies of pictures of calls made by Defendant to the cellular telephone. **(See Exhibit D).**

b. Defendant used an ATDS or a type of telephone system that has the capacity to auto dial Plaintiff's cellular telephone number (203) 721-2531.

In placing each telephone call, Defendant used a telephone dialing system with the capacity to automatically dial Plaintiff's cell phone. On multiple occasions Plaintiff answered the telephone calls and was either greeted with recorded messages or a period of silence before a representative would come on the line. **(Refer to Exhibit C and D)**

c. Plaintiff sent Defendant a written communication attempting to mitigate the issues in question in the above captioned case.

Plaintiff sent a written communication on July 25, 2014 notifying Defendant that they did not have permission to call Plaintiff's cellular phone number. Defendant ignored Plaintiff's written communication and continued to call Plaintiff's cellular phone number an additional twenty one (21) separate times. **(See Exhibit E)** Plaintiff sent a second written communication on February 25, 2015 — but, Plaintiff never received any response to her written communications. **(Refer to Exhibit E)**

Defendant sent Plaintiff a written communication only after being served with the summons and complaint in the above captioned case. Defendant sent Plaintiff a written communication

dated April 16, 2015 via Federal Express acknowledging the receipt of the Complaint against Defendant. Defendant argues in their communication that, "MNE is not subject to the jurisdiction of the Court in this matter, and will exercise its sovereign right not to incur the time and expense of appearing in this matter to defend against your frivolous claims". **(See Exhibit F)** Plaintiff finds it interesting that if Defendant is assertive that Plaintiff's claims are frivolous and Defendant is not subject to the jurisdiction of this Court, then why has Defendant chosen the position to not file a response pleading rather than file a dispositive motion?

d. Affidavit of Rosa Rivera

The Affidavit of Rosa Rivera **(Refer to Exhibit C)** will establish the following:

- i. Plaintiff Rosa Rivera, did, in fact, have custody and control of the cellular telephone (203) 721-2531 that received the calls from a number known to be used by Defendant MNE Services, Inc. d/b/a Ameriloan.
- ii. The pictures will establish the date and times that the calls were placed to Plaintiff's cellular telephone number (203) 721-2531 by Defendant.
- iii. Plaintiff Rosa Rivera did not give her express consent in any form to Defendant to call her cellular telephone number (203) 721-2531.
- iv. The Plaintiff Rosa Rivera currently has and had at all times since it was purchased, custody and control of the cellular telephone number (203) 721-2531.
- v. The Plaintiff Rosa Rivera answered many of the telephone calls on multiple occasions and was either greeted with recorded messages or a period of silence before a representative would come on the line.

vi. Plaintiff Rosa Rivera sent a written communication to Defendant on July 23, 2014 and February 25, 2014 via United States Postal Service Certified Mail.

vii. Plaintiff Rosa Rivera received a written communication from Defendant dated April 16, 2015.

e. Affidavit of Non-Military Status

The affidavit of Non-Military Status will establish that the Defendant is a Corporation, therefore cannot serve in the military. **(Exhibit G)**

f. Certificate of Last Known Address

The Certificate of Last Known Address will set forth Defendant's last known address. **(Exhibit H)**

V. DAMAGES

The plain language of the TCPA pursuant to 47 U.S.C. § 227(b)(3) states:

(B) An action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater

(C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

The Plaintiff has provided thirty (30) separate pictures of each call Defendant placed from telephone numbers (800) 530-3790, (800) 326-5383, (800) 371-9252, and (800) 396-2018 between June 26, 2014 and August 28, 2014 to her cellular telephone. **(Refer to Exhibit D)**

Plaintiff sent a written communication to Defendant informing them that they did not have her permission to call her cellular telephone number. Defendant ignored Plaintiff's written communication and continued to call her cellular phone number an additional twenty one (21) times from July 28, 2014 through August 28, 2014.

Plaintiff respectfully request this court to award five hundred dollars (\$500.00) per each call for the first 9 calls pursuant to 47 U.S.C. § 227(b)(3)(B) and fifteen hundred dollars (\$1500.00) per call for the remaining of the 21 calls that were placed knowingly by Defendant who was notified through written communication that no permission was given to call the cellular telephone number pursuant to 47 U.S.C. § 227(b)(3)(C), for total of thirty six thousand dollars (\$36,000.00).

In addition, the consumer need not prove any monetary loss or actual damages in order to recover the statutory penalty, because such losses are likely to be minimal, a statutory penalty is necessary to motivate consumers to enforce the statute. See *Lary v. American Med. Practice Servs.*, 909 So. 2d 204 (Ala. Civ. App. 2005); *Kaplan v. Democrat & Chron.*, 701 N.Y.S. 2d 859 (N.Y. App. Div. 1999); *Kaplan v. First City Mortgage*, 701 N.Y.S. 2d 859 (N.Y. City Ct. 1999); *Kaplan v. Democrat & Chron.*, 698 N.Y.S. 2d 799, 801 (N.Y. App. Div. 1999); cf. *J.A. Weitzman, Inc. v. Lerner, Cumbo & Assocs., Inc.*, 847 N.Y.S. 2d 679 (N.Y. App. Div. 2007).

Accordingly, as set forth in the Petition and supported by the Affidavit to this Motion for Default Judgment, Plaintiff request for statutory damages in the amount of \$36,000, plus Court Costs.

VI. CONCLUSION / SUMMARY

The unquestionable facts of the above captioned case are as follows:

- a. Defendant called the cellular telephone number (203) 721-2531 from telephone numbers (800) 326-5383, (800) 371-9252, and (800) 396-2018 at least thirty (30) separate times.
- b. Plaintiff has never given Defendant her express consent, written or otherwise at any time to contact her cellular telephone number (203) 721-2531.
- c. Defendant received Plaintiff's written communication on July 25, 2014 notifying them that Defendant did not have permission to call Plaintiff's cellular phone. Defendant knowingly continued to call Plaintiff's cellular phone number an additional twenty (21) separate times.
- d. Defendant used a telephone dialing system with the capacity to automatically dial Plaintiff's cell phone. On multiple occasions Plaintiff answered the telephone calls and was either greeted with recorded messages or a period of silence before a representative would come on the line.

A court may render a default judgment against a party who has not filed a responsive pleading or otherwise defended the suite. *See* Fed. R. Civ. P. 55(a), (b)(2). This Court should render a default judgment against defendant because defendant did not file a responsive pleading within 21 days after March 20, 2015, the date of service. Fed. R. Civ. P. 12(a)(1)(A)(i). Because Defendant did not file a responsive pleading within 21 days after March 20, 2015, the date of service. Fed. R. Civ. P. 12(a)(1)(A)(i); *see* Fed. R. Civ. P. 55(a), the Plaintiff asks the Court to grant this motion and render a default judgment for the sum of thirty six thousand dollars (\$36,000.00), plus Court costs.

Dated: June 08, 2015

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Rosa Rivera', is written over a horizontal line.

Rosa Rivera
2608 Refugio Ave.
Fort Worth, TX 76164
(817) 689-1240
rosarivera54@yahoo.com

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

ROSA RIVERA

Plaintiff.

v.

MNE SERVICES, INC.

D/B/A AMERILOAN

Defendant.

CIVIL ACTION NO. 4-15-CV-195-A

**ORDER ON PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT**

On _____, 20_____, the Court considered Plaintiff Rosa Rivera's motion for default judgment against Defendant MNE Services, Inc. d/b/a Ameriloan. The court clerk entered default on May 27, 2015. After considering the Court's file and proof of service, the Court:

GRANTS the motion for default judgment and renders judgment as follows: \$36,000.00 plus \$400.00 in court costs.

SIGNED on _____, 20_____

U.S. DISTRICT JUDGE

The State of Texas



Service of Process
P.O. Box 12079
Austin, Texas 78711-2079

Phone: 512-463-5560
Fax: 512-463-0873
TTY (800) 735-2989
www.sos.state.tx.us

Secretary of State

April 6, 2015

Rosa Rivera
2608 Refugio Ave.
Fort Worth, TX 76164

2015-251188

Include reference number in
all correspondence

RE: ROSA RIVERA V. MNE SERVICES, INC. D/B/A AMERILOAN
United States District Court Northern District of Texas
Cause No: 415CV195A

Dear Sir/Madam:

Please find enclosed your Certificate(s) of Service for the case styled above.

If this office may be of further assistance to you, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Orta".

Michael Orta
Service of Process

Enclosure

**PLAINTIFF'S
EXHIBIT**

A



The State of Texas
Secretary of State

2015-251188-1

I, the undersigned, as Secretary of State of Texas DO HEREBY CERTIFY that according to the records of this office, a copy of the Summons and Original Complaint in the cause styled:

ROSA RIVERA V. MNE SERVICES, INC. D/B/A AMERILOAN
United States District Court Northern District of Texas
Cause No: 415CV195A

was received by this office on March 20, 2015, and that a copy was forwarded on March 25, 2015, by CERTIFIED MAIL, return receipt requested to:

MNE Services, Inc.
3531 P Street NW
Miami, OK 74354

The RETURN RECEIPT was received in this office dated April 3, 2015, bearing signature.



Date issued: April 6, 2015

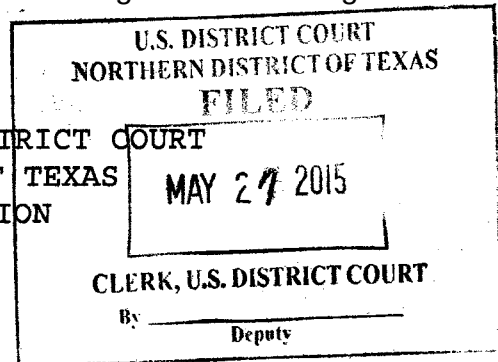
A handwritten signature in black ink, appearing to read "Cascos", followed by a horizontal line.

Carlos Cascos
Secretary of State

GF/vjb



IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



ROSA RIVERA,

Plaintiff,

VS.

MNE SERVICES, INC.,
D/B/A AMERILOAN,

Defendant.

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NO. 4:15-CV-195-A

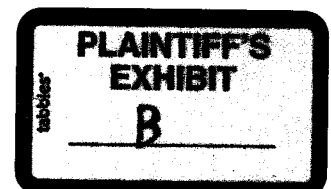
CLERK'S ENTRY OF DEFAULT AGAINST DEFENDANT

It appearing that defendant MNE Sevices, Inc., d/b/a Ameriloan, is in default for failure to appear or answer or otherwise plead to the complaint filed herein within the time required by law, default is hereby entered, pursuant to Fed. R. Civ. P. 55(a).

SIGNED May 27, 2015.

Karen Mitchell
Clerk of the United States District
Court for the Northern District of
Texas

by Leather Arnold
DEPUTY CLERK



**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

ROSA RIVERA

Plaintiff.

v.

MNE SERVICES, INC.

D/B/A AMERILOAN

Defendant.

CIVIL ACTION NO. 4-15CV-195-A

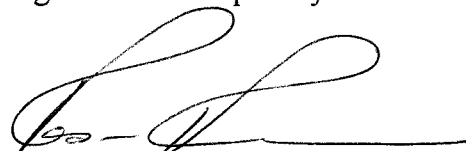
AFFIDAVIT OF ROSA RIVERA

BEFORE ME personally appeared Rosa Rivera who, being by me first duly sworn and identified in accordance to Texas law, deposes and says:

1. My name is Rosa Rivera
2. I, Rosa Rivera, am the owner of the cellular telephone assigned the phone number (203) 721-2531.
3. I, Rosa Rivera, have been the owner of the subject telephone number (203) 721-2531 since June 25, 2014 until the present time.
4. I, Rosa Rivera, attest that the pictures attached to Plaintiff's Motion for Default Judgment as Exhibit D, are true and correct copies of the cellular telephone.
5. I, Rosa Rivera, answered the phone nine (9) times and on the following dates: June 26, 2014, June 28, 2014, July 18, 2014, August 08, 2014, August 05, 2014, August 06, 2014, August 07, 2014, August 12, 2014, and August 15, 2014. I, Rosa Rivera was greeted with recorded messages or a period of silence.




6. I, Rosa Rivera have never given MNE Services, Inc. express consent, written, or otherwise to contact me on my cellular telephone number (203) 721-2531.
7. I, Rosa Rivera, have no prior or present established relationship with MNE Services, Inc.
8. I, Rosa Rivera, sent a written communication to MNE Services, Inc. via United States Postal Service Certified Mail Number 70140150000180823761 on July 23, 2014 and February 25, 2015 in an attempt to mitigate the telephone calls made to my cellular phone without express permission. I, Rosa Rivera, have never received any response from MNE Services, Inc. regarding the written communications. I, Rosa Rivera, attest that the letters attached as Exhibit E to Plaintiff's Motion for Default Judgement are true and correct copies.
9. I, Rosa Rivera, attest that the letter dated April 16, 2015 from Conly J. Schulte on behalf of Defendant in the above captioned case, attached as Exhibit F to Plaintiff Motion for Default Judgment is a true and correct copy.
10. I, Rosa Rivera, further certify that I am over the age of eighteen.
11. I, Rosa Rivera, testify that these statements are true and signed under the penalty of perjury.

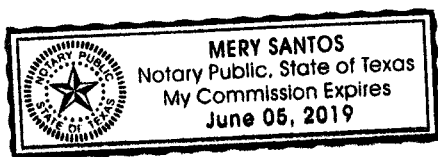

Rosa Rivera, Affiant

State of TEXAS
County of TARRANT

SWORN TO and subscribed before me, a notary public, on this 08 day of June 2015 personally appeared Rosa Villanueva Rivera, known to me through description of identity card to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

(Personalized Seal)


Notary Public's Signature



View (32/34)

Received Calls
Unregistered
18003265383

Date : 06/26/2014
Time : 05:07 pm
Duration : 00:00:48

View (29/34)

Received Calls
Unregistered
18003265383

Date : 06/28/2014
Time : 10:16 am
Duration : 00:00:31

View (28/34)

Missed Calls
Unregistered
18003265383

Date : 06/30/2014
Time : 07:39 am

View (4/34)

Received Calls
Unregistered
18003255034

Date : 07/16/2014
Time : 04:09 pm
Duration : 00:00:00

View (2/34)

Received Calls
Unregistered
18003962018

Date : 07/18/2014
Time : 10:44 am
Duration : 00:00:03

View (1/34)

Missed Calls
Unregistered
18003962018

Date : 07/19/2014
Time : 01:17 pm

View (25/61)

Missed Calls
Unregistered
18003962018

Date : 07/24/2014
Time : 07:18 am

Missed Calls
Unregistered
18003719252

Date : 08/01/2014
Time : 09:02 am

Received Calls
[2x]Unregistered
18003719252
Duration : 00:00:26

Date : 08/04/2014
Time : 09:32 am
Duration : 00:00:14

PLAINTIFF'S
EXHIBIT

0

Received Calls
[2x]Unregistered
18003719252

Date : 08/05/2014

Time : 08:51 am

Duration : 00:00:26

Date : 08/04/2014

View (12/61)

Received Calls
Unregistered
18003719252

Date : 08/06/2014

Time : 09:02 am

Duration : 00:00:29

Received Calls
Unregistered
18003719252

Date : 08/07/2014

Time : 10:57 am

Duration : 00:00:20

Missed Calls
Unregistered
18003719252

Date : 08/08/2014

Time : 03:04 pm

View (5/61)

Missed Calls
Unregistered
18003719252

Date : 08/11/2014

Time : 07:20 am

View (3/61)

Received Calls
Unregistered
18003719252

Date : 08/12/2014

Time : 08:48 am

Duration : 00:00:25

Missed Calls
Unregistered
18003719252

Date : Today

Time : 07:39 am

Missed Calls
[2x]Unregistered
18003719252

Date : 08/14/2014

Time : 07:40 am

View (32/51)

Received Calls
Unregistered
18003719252

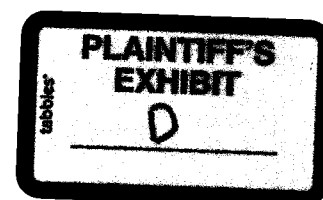
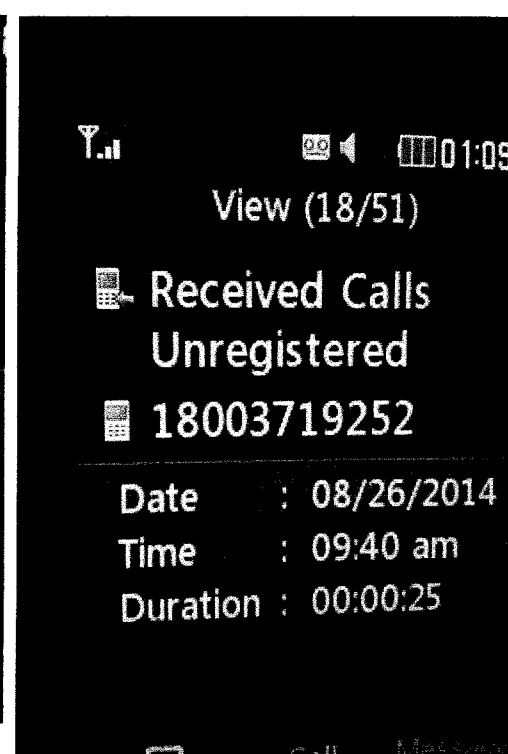
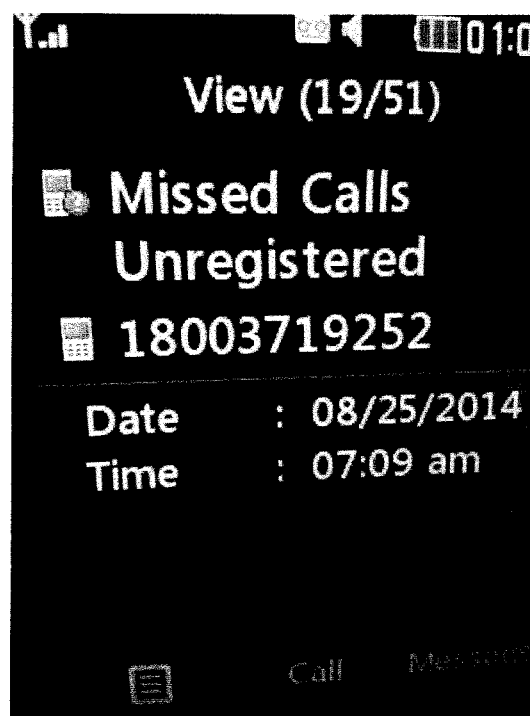
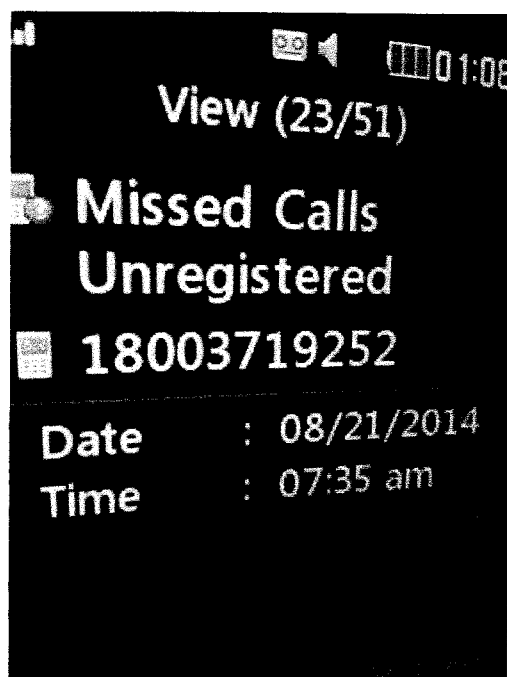
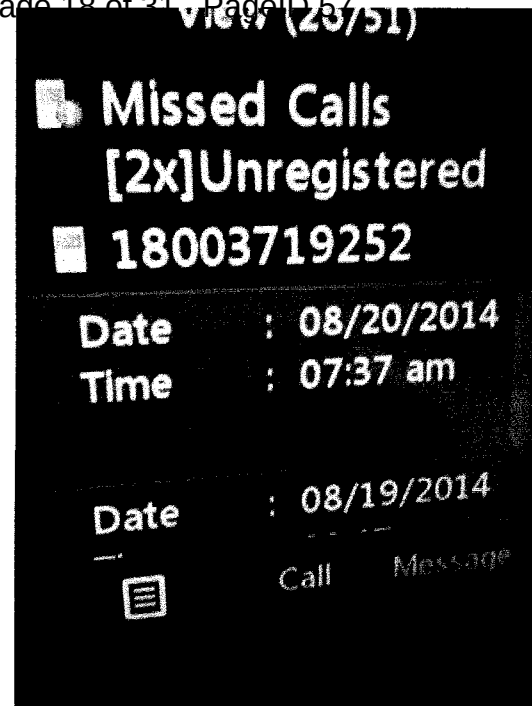
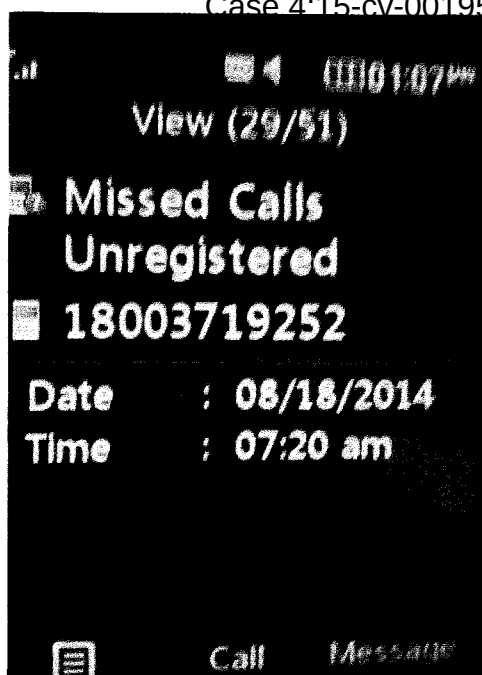
Date : 08/15/2014

Time : 07:36 am

Duration : 00:00:13

**PLAINTIFF'S
EXHIBIT**

D



View (16/51)

 Missed Calls
[2x] Unregistered
 18003719252

Date : 08/27/2014
Time : 07:07 am



Call Message

View (16/51)

 Missed Calls
[2x] Unregistered
 18003719252

Date : 08/28/2014
Time : 07:31 am

Date : 08/27/2014



Call Message

PLAINTIFF'S
EXHIBIT

D

USPS Certified Mail # 7014 0150 0001 8082 3761

Date: July 23, 2014

Rosa Rivera
2608 Refugio Ave.
Fort Worth, Texas 76164

MNE Service, Inc. d/b/a AmeriLoan
P.O. Box 111
Miami, OK 74355

I have received no less than six (6) telephone calls from **(800) 326-5383 with automated recordings** to my cellular telephone number **(203) 721-2531** without any express written consent or implied consent to contact me.

I have received calls on the following dates:

1. June 26, 2014 at 05:07 p.m.
2. June 28, 2014 at 10:16 a.m.
3. June 30, 2014 at 07:39 a.m.
4. July 16, 2014 at 04:09 p.m.
5. July 18, 2014 at 10:44 a.m.
6. July 19, 2014 at 01:17 p.m.

MNE Service, Inc. d/b/a AmeriLoan is in violations of but not limited to:

1. **Telephone Consumer Protection Act (TCPA) 47 U.S.C. § 227(b)(1)(A)**
2. **Telephone Consumer Protection Act (TCPA) 47 U.S.C. § 227(b)(1)(A)(iii)**

It is my hope that we can reach an amicable resolution regarding these violations of my rights and federal laws without having to resort to litigation.

I will withhold from filing a federal complaint for at least 14 days from the receipt of this letter. I can be reached directly at **(817) 689-1240**, via email at **rosarivera54@yahoo.com**, or **2608 Refugio Ave., Fort Worth, TX 76164**. This telephone number is not to be called, shared, or used for any purpose other than to address the matters at hand.

s/ Rosa Rivera
ROSA RIVERA





USPS Tracking™



Customer Service ›
Have questions? We're here to help.



Get Easy Tracking Updates ›
Sign up for My USPS.com.

Tracking Number: 70140150000180823761

On Time
Expected Delivery Day: Friday, July 25, 2014

Product & Tracking Information

Postal Product:
First-Class Mail®

Features:
Certified Mail™

Available Actions

DATE & TIME	STATUS OF ITEM	LOCATION
July 25, 2014 , 10:32 am	Delivered	MIAMI, OK 74354
Your item was delivered at 10:32 am on July 25, 2014 in MIAMI, OK 74354.		
July 25, 2014 , 8:57 am	Available for Pickup	MIAMI, OK 74354
July 25, 2014 , 7:51 am	Out for Delivery	MIAMI, OK 74354
July 25, 2014 , 7:41 am	Sorting Complete	MIAMI, OK 74354
July 25, 2014 , 7:13 am	Arrived at Unit	MIAMI, OK 74354
July 25, 2014 , 1:53 am	Departed USPS Facility	TULSA, OK 74141
July 24, 2014 , 3:18 pm	Arrived at USPS Facility	TULSA, OK 74141
July 24, 2014 , 1:02 am	Departed USPS Facility	COPPELL, TX 75099
July 23, 2014 , 9:36 pm	Arrived at USPS Facility	COPPELL, TX 75099
July 23, 2014 , 5:44 pm	Departed Post Office	FORT WORTH, TX 76161
July 23, 2014 , 8:13 am	Acceptance	FORT WORTH, TX 76161

Track Another Package

Tracking (or receipt) number

Track It

Manage Incoming Packages

Track all your packages from a dashboard.
No tracking numbers necessary.



USPS Certified Mail # 7014 0150 0001 8077 4797

Date: February 25, 2015

Rosa Rivera
2608 Refugio Ave.
Fort Worth, Texas 76164

MNE Service, Inc. d/b/a AmeriLoan
P.O. Box 111
Miami, OK 74355

I have received no less than thirty (30) telephone calls from (800) 326-5383, (800) 371-9252, and (800) 396-2018 to my cellular telephone number **(203) 721-2531** without any express written consent or implied consent to contact me.

I have received calls on the following dates:

- | | |
|-----------------------------------|-----------------------------------|
| 1. June 26, 2014 at 05:07 p.m. | 16. August 07, 2014 at 10:57 a.m. |
| 2. June 28, 2014 at 10:16 a.m. | 17. August 08, 2014 at 03:04 p.m. |
| 3. June 30, 2014 at 07:39 a.m. | 18. August 11, 2014 at 07:20 a.m. |
| 4. July 7, 2014 at 09:31 a.m. | 19. August 12, 2014 at 08:48 a.m. |
| 5. July 12, 2014 at 09:46 a.m. | 20. August 13, 2014 at 07:39 a.m. |
| 6. July 16, 2014 at 04:09 p.m. | 21. August 13, 2014 at 07:40 a.m. |
| 7. July 18, 2014 at 10:44 a.m. | 22. August 15, 2014 at 07:36 a.m. |
| 8. July 19, 2014 at 01:17 p.m. | 23. August 18, 2014 at 07:20 a.m. |
| 9. July 24, 2014 at 07:18 a.m. | 24. August 19, 2014 at 08:47 a.m. |
| 10. July 28, 2014 at 04:56 p.m. | 25. August 20, 2014 at 07:37 a.m. |
| 11. July 31, 2014 at 08:50 a.m. | 26. August 21, 2014 at 07:35 a.m. |
| 12. August 01, 2014 at 09:02 a.m. | 27. August 25, 2014 at 07:09 a.m. |
| 13. August 04, 2014 at 09:32 a.m. | 28. August 26, 2014 at 09:40 a.m. |
| 14. August 05, 2014 at 08:51 a.m. | 29. August 27, 2014 at 07:07 a.m. |
| 15. August 06, 2014 at 09:20 a.m. | 30. August 28, 2014 at 07:31 a.m. |

MNE Service, Inc. d/b/a AmeriLoan is in violations of but not limited to:

1. **Telephone Consumer Protection Act (TCPA) 47 U.S.C. § 227(b)(1)(A)**
2. **Telephone Consumer Protection Act (TCPA) 47 U.S.C. § 227(b)(1)(A)(iii)**

On July 23, 2014, I sent a USPS Certified Letter # 7014 0150 0001 8082 3761, informing MNE Services, Inc. that they did not have express permission to contact my cellular phone. Despite my request to stop calling my cellular phone, MNE Services, Inc. continued to call an additional eighteen (18) times.

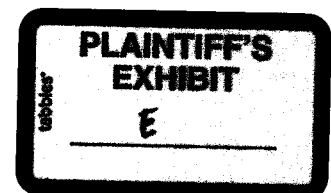


I will withhold from filing a federal complaint for at least 10 days from the receipt of this letter.

I can be reached directly at (817) 689-1240, via email at rosarivera54@yahoo.com, or 2608 Refugio Ave., Fort Worth, TX 76164. This telephone number is not to be called, shared, or used for any purpose other than to address the matters at hand.

/s/ Rosa Rivera
ROSA RIVERA

Enclosed: Please find photos of the telephone calls made to my cellular phone and a draft of the federal complaint so that you may understand the seriousness of this matter.



USPS.COM
 Search Click to access search.
 Search or Enter a Tracking Number
 Search or Enter a TrackiiSearch

USPS Tracking™



Customer Service >
 Have questions? We're here to help.



Get Easy Tracking Updates >
 Sign up for My USPS.com.

Tracking Number: 70140150000180774797

Expected Delivery Day: Friday, February 27, 2015

Product & Tracking Information

Postal Product:
 First-Class Mail®

Features:
 Certified Mail™

Available Actions

DATE & TIME	STATUS OF ITEM	LOCATION
February 27, 2015 , 10:16 am	Delivered	MIAMI, OK 74354
Your item was delivered at 10:16 am on February 27, 2015 in MIAMI, OK 74354.		
February 27, 2015 , 8:29 am	Available for Pickup	MIAMI, OK 74355
February 26, 2015 , 9:01 pm	Departed USPS Facility	TULSA, OK 74141
February 26, 2015 , 1:55 pm	Arrived at USPS Facility	TULSA, OK 74141
February 26, 2015 , 1:08 am	Arrived at USPS Origin Facility	COPPELL, TX 75099
February 25, 2015 , 5:39 pm	Departed Post Office	FORT WORTH, TX 76161
February 25, 2015 , 8:14 am	Acceptance	FORT WORTH, TX 76161

Track Another Package

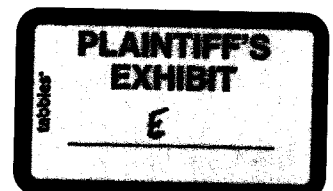
Tracking (or receipt) number

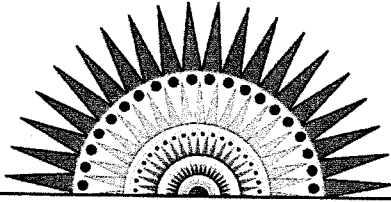
Track It

Manage Incoming Packages

Track all your packages from a dashboard.
 No tracking numbers necessary.

Sign up for My USPS.com





FREDERICKS PEEBLES & MORGAN LLP
ATTORNEYS AT LAW

CONLY J. SCHULTE

1900 Plaza Drive

Louisville, CO 80027

Telephone: (303) 673-9600

Fax: (303) 673-9839

E-Mail: cschulte@ndnlaw.com

www.ndnlaw.com

April 16, 2015

Via Federal Express

Ms. Rosa Rivera
2608 Refugio Avenue
Fort Worth, Texas 76164

Dear Ms. Rivera,

We are in receipt of and have thoroughly reviewed the Complaint against my client, MNE Services d/b/a Ameriloan, a governmental instrumentality wholly owned by the Miami Tribe of Oklahoma ("MNE"). We are providing this "safe harbor" letter to you pursuant to Rule 11 of the Federal Rules of Civil Procedure, and demand that you voluntarily dismiss your Complaint, or face a motion for sanctions, wherein we will demand that the Court order you to pay to MNE Services monetary sanctions, including the cost of its attorney fees. Rule 11 provides in relevant part:

b) Representations to Court. By presenting to the court a pleading written motion, or other paper—whether by signing, filing, submitting, or later advocating it-- an attorney *or unrepresented party* is certifying to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, --

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses or other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;



- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

Sanctions

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, ***the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation.***

Fed. R. Civ. P. 11

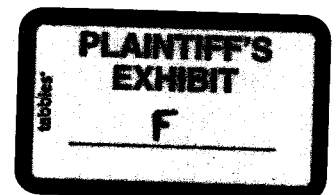
Federal Courts have explained that under Rule 11:

[S]anctions may be imposed if “a reasonable inquiry discloses the pleading, motion, or paper is (1) not well grounded in fact, (2) not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, or (3) interposed for any improper purpose such as harassment or delay.” *Herron v. Jupiter Transp. Co.*, 858 F.2d 332, 335 (6th Cir. 1988). The purpose of sanctions is to deter the abuse of the legal process. *Id.* . . . As amended, the rule “*stresses the need for some pre-filing inquiry into both the facts and the law to satisfy the affirmative duty imposed.*” *Id.*

Merritt v. International Ass'n of Machinists, 613 F.3d 609, 626 (6th Cir. 2010).

Significantly for you, **the United States Supreme Court has held that Rule 11 applies to parties and pro-se litigants** (i.e., persons representing themselves, like you). **“Rule 11 applies to pro se litigants as well as to attorneys and parties represented by attorneys.”** *Business Guides, Inc. v. Chromatic Communications Enter.*, 111 S.Ct. 922, 930 (1991). **Sanctions must be imposed on the signer if the filing is “frivolous.”** *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1365-66 (9th Cir.1990). **We define a frivolous filing as one “that is both baseless and made without a reasonable and competent inquiry.”** *Id.*

Moreover, the “reasonable inquiry under Rule 11 is not a one-time obligation . . . plaintiff is impressed with a continuing responsibility to review and reevaluate his pleadings.” *Id.* It is well established that “Rule 11 sanctions are appropriate when an attorney [or pro se party] refuses to dismiss a claim after becoming aware that it lacks merits.” *Baker v. Chevron U.S.A., Inc.*, 533 F.App'x. 509, 2013 WL 3968783 (6th Cir. 2013).



We have undertaken an investigation of the claims that you allege in your Complaint, and have determined that such claims are baseless and made without a reasonable and competent inquiry into the facts or the law. Primarily, *we have determined that the phone number to which MNE Services allegedly placed the calls that you list in paragraph 13 of your complaint, (203)721-2531, was not assigned to you at the time that the calls were allegedly placed.* Instead, the phone number was assigned by T-Mobile to Julio Arroyo of West Haven, Connecticut. MNE Services has a contractual relationship with Mr. Arroyo and is authorized to place phone calls to such number. Furthermore, federal courts have firmly established that, under the Telephone Consumer Protection Act, 47 U.S.C. § 227, "a 'called party' a means the person subscribing to the called number at the time the call is made. *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 643 (7th Cir. 2012). Accordingly, since you were *not* the person subscribing to the T-Mobile number, (203)721-2531, at the time the calls were allegedly made, you have no basis to bring the claims in your Complaint. Your Complaint is thus both baseless and made without a reasonable and competent inquiry, and you are subject to monetary sanctions under Rule 11 if you do not withdraw the complaint within 21 days of your receipt of this letter.

In addition, MNE is a governmental instrumentality of the Miami Tribe of Oklahoma, a federally recognized Indian Tribe. *See* 25 U.S.C. 479a, 79 F.R. 19, 4748 (January 28, 2014). As a subdivision of a federally-recognized Indian tribe, MNE is not subject to process or suit based upon well-established principles of tribal sovereignty recognized as a matter of federal law. *See, e.g., Michigan v. Bay Mills Indian Cmty*, 134 S.Ct. 2024, 188 L.Ed.2d 1071 (2014); *Kiowa Tribe of Oklahoma v. Mfg. Technologies Inc.*, 523 U.S. 751, 754 (1998); *People v. Miami Nation Enterprises*, 223 Cal.App.4th 21, 166 Cal.Rptr.3d 800 (Cal. App. 2014). Accordingly, MNE is not subject to the jurisdiction of the Court in this matter, and will exercise its sovereign right not to incur the time and expense of appearing in this matter to defend against your frivolous claims. Should you choose to ignore your duties under Rule 11 and continue to pursue your frivolous claims, MNE will assert sovereign immunity in any attempts that you may make to enforce any judgment that you may obtain. MNE will also seek monetary sanctions against you pursuant to Rule 11 and other applicable laws in such proceedings, including payment of all costs and attorneys' fees incurred by MNE in this and any other proceedings related to this matter.

Accordingly, pursuant to Rule 11 of the Federal Rules of Civil Procedure, MNE Services demands that you withdraw your Complaint within 21 days of your receipt of this correspondence.

Sincerely,



Conly J. Schulte

CJS/hp

cc: MNE Services



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ROSA RIVERA

Plaintiff.

v.

MNE SERVICES, INC.

D/B/A AMERILOAN

Defendant.

CIVIL ACTION NO. 4-15CV-195-A

MILITARY AFFIDAVIT

Before me, the undersigned notary, on this day personally appeared Rosa Rivera, the affiant, a person whose identity is known to me. After I administered an oath, affiant testified as follows:

1. My name is Rosa Rivera. I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. Defendant MNE Services, Inc., d/b/a Ameriloan, is not in the military. Defendant is a corporation/business and not a living person.
3. I, Rosa Rivera, further certify that I am over the age of eighteen.
4. I, Rosa Rivera, testify that these statements are true and signed under the penalty of perjury.



Rosa Rivera, Affiant

State of TEXAS
County of TARRANT

SWORN TO and subscribed before me, a notary public, on this 08 day of June 2015 personally appeared Rosa Villanueva Rivera, being by me first duly sworn, declared that the statements therein contained are true and correct.

(Personalized Seal)


Notary Public's Signature



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ROSA RIVERA

Plaintiff.

v.

MNE SERVICES, INC.

D/B/A AMERILOAN

Defendant.

CIVIL ACTION NO. 4-15CV-195-A

CERTIFICATE OF LAST KNOWN MAILING ADDRESS

This Certificate certifies that the last known mailing address of Defendant MNE Services, Inc. d/b/a Ameriloan is:

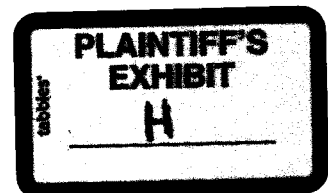
3531 P Street NW, Miami, OK 74354.

Dated: June 08, 2015

Respectfully Submitted,



Rosa Rivera
2608 Refugio Ave.
Fort Worth, TX 76164
(817) 689-1240
rosarivera54@yahoo.com



June 09, 2015

Rosa Rivera
2608 Refugio Ave.
Fort Worth, Texas 76164

United States District Court
Northern District of Texas
Clerk's Office
501 West 10th Street, Room 310
Fort Worth, TX 76102-3673

RE: Rosa Rivera v. MNE Services, Inc. d/b/a Ameriloan, USDC Northern District of Texas ,Fort
Worth Division, Civil Action No.: 4-15-cv-00195-A

Dear Clerk of the Court:

Please find enclosed an "Original" and "Judge Copy" of Plaintiff's Motion for Default
Judgement.

Please file the documents accordingly.

I thank you for your attention to this matter.

If you have any questions please do not hesitate to contact me at (817) 689-1240.

Thank You,

A handwritten signature in black ink, appearing to be 'Rosa Rivera', with a stylized, flowing script.

Rosa Rivera

R. Rivera
2608 Refugio Ave.
Fort Worth, Texas 76164

United States District Court
Northern District of Texas
Clerk's Office
501 West 10th Street, Room 310
Fort Worth, Texas 76102

